

Proposed Rule
LSA Document #14-509

DIGEST

Amends [512 IAC 4-1-1](#) to add definitions for applicants, dual enrollment, and siblings. Amends [512 IAC 4-1-2](#) to add provisions regarding, and requirements for, eligible school applications. Amends [512 IAC 4-1-3](#) to add provisions regarding, and requirements for, eligible choice scholarship students. Adds [512 IAC 4-1-3.1](#) to add provisions regarding, and requirements for, choice scholarship eligibility. Adds [512 IAC 4-1-3.2](#) to add provisions regarding, and requirements for, eligible school tuition and fees. Adds [512 IAC 4-1-3.3](#) to add provisions regarding determining choice scholarship amounts. Amends [512 IAC 4-1-4](#) to make technical changes regarding the distribution of choice scholarships. Amends [512 IAC 4-1-5](#) to add provisions regarding prorated scholarships and reporting requirements for eligible schools. Adds [512 IAC 4-1-6](#) to add provisions regarding consequences for eligible schools in lowest performance categories. Adds [512 IAC 4-1-7](#) to add provisions and requirements regarding suspending or terminating a school's eligibility under [512 IAC 4](#). Adds [512 IAC 4-1-8](#) to add requirements for maintaining records and documents. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[512 IAC 4-1-1](#); [512 IAC 4-1-2](#); [512 IAC 4-1-3](#); [512 IAC 4-1-3.1](#); [512 IAC 4-1-3.2](#); [512 IAC 4-1-3.3](#); [512 IAC 4-1-4](#); [512 IAC 4-1-5](#); [512 IAC 4-1-6](#); [512 IAC 4-1-7](#); [512 IAC 4-1-8](#)

SECTION 1. [512 IAC 4-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[512 IAC 4-1-1](#) Definitions

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-24](#); [IC 20-51](#)

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Applicant" means an individual who has completed a choice scholarship application at an eligible school.

~~(b)~~ **(c) "Choice scholarship" means the award to an eligible individual choice scholarship student as determined by [IC 20-51-4](#) for payment of educational services provided by an eligible school.**

~~(c)~~ **(d) "Choice scholarship program" refers to the scholarship program created by [IC 20-51-4](#).**

~~(d)~~ **(e) "Department" means the department of education established by [IC 20-19-3-1](#).**

(f) "Dual enrollment" refers to an individual who is enrolled in a public school and a nonpublic school and receives instructional services from both a public school and the nonpublic school.

~~(e)~~ **(g) "Eligible individual choice scholarship student" means an individual who meets the requirements of [IC 20-51-1-4.5](#) [IC 20-51-1-4.3](#) and this rule.**

~~(f)~~ **(h) "Eligible school" means a school that meets the requirements of [IC 20-51-1-4.7](#) and this rule.**

~~(g)~~ **(g) For purposes of [IC 20-51-1-4.5](#), an individual is enrolled in a public school corporation for at least two (2) semesters immediately preceding the first semester for which the individual receives a choice scholarship if attendance in the school corporation is established by one (1) of the following:**

(1) An official transcript from the school.

(2) An attendance entry by the school in the department's official attendance report.

(h) For purposes of subsection (g), "school corporation" means the following:

- (1) Any local public school corporation established under Indiana law.
- (2) A charter school established under [IC 20-24](#).

(i) **"Sibling" means one (1) of two (2) or more individuals having one (1) or both parents, guardians, or custodians in common. The term does not require a consanguineous relationship between the individuals.**

(Department of Education; [512 IAC 4-1-1](#); filed Jun 25, 2012, 2:00 p.m.: [20120725-IR-512120054FRA](#))

SECTION 2. [512 IAC 4-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[512 IAC 4-1-2](#) Eligible school requirements

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-31-8-3](#); [IC 20-32-5](#); [IC 20-51](#)

Sec. 2. (a) The department shall establish and ~~publish the~~ **make available all necessary** application forms and procedures for ~~designation as a school to become~~ an eligible school.

(b) To become an eligible school, the school must do the following:

- (1) Satisfy all of the requirements of [IC 20-51-1-4.7](#).
- (2) **Annually** submit a completed application in accordance with the procedures established by the department.
- (3) **Agree to comply with all assurances listed on the application established by the department.**

(c) An application will not be considered complete until all of the requirements of [IC 20-51-1-4.7](#) have been verified by the department.

~~(e)~~ **(d)** The department shall publish and ~~regularly~~ **periodically** update a list of eligible schools.

~~(d)~~ An eligible school shall maintain records for verification of student eligibility under [IC 20-51-1-4.5](#) for the time period established and published by the department.

~~(e)~~ An eligible school, within timelines established and published by the department, must achieve a cumulative student enrollment size of thirty (30) students in assessed grades under [IC 20-32-5](#) for determination of category designation under [IC 20-31-8-3](#).

~~(f)~~ The department shall establish and publish procedures regarding the maintenance of eligibility status.

~~(g)~~ **(e)** The department may take action up to and including suspension or termination, or both, of the school's eligibility if the department determines the school failed to comply with any of the following:

- (1) [IC 20-51-1-4.7](#).
- (2) [IC 20-51-4-1](#).
- (3) [IC 20-51-4-3](#).
- (4) This rule.
- (5) Any assurances made as part of the application.
- (6) An obligation to repay any amount due as determined under section ~~6(d)~~ **5** of this rule.
- (7) Maintenance of records as required under ~~subsection (d)~~ **this article**.

~~(h)~~ Prior to suspending or terminating a school's eligibility, the department shall provide written notice to the eligible school. The written notice shall include the following:

- (1) The nature of the noncompliance.
- (2) The corrective action the eligible school must take.
- (3) The deadline for the corrective action to be implemented.

~~(4) The consequences for failing to take the corrective action by the established deadline.~~

~~(i) If the eligible school fails to remedy the noncompliance within the timeline provided by the department, the department shall notify the eligible school in writing of the:~~

- ~~(1) suspension or termination of the school's eligibility; and~~
- ~~(2) process for appealing the decision.~~

~~(j) The eligible school may appeal the department's action under subsection (g) in accordance with procedures established by the department.~~

~~(k) The department shall establish and publish appeal procedures.~~

(f) A completed application and a determination of eligibility by the department will satisfy the requirements of [IC 20-51-4-3](#)(f).

(Department of Education; [512 IAC 4-1-2](#); filed Jun 25, 2012, 2:00 p.m.: [20120725-IR-512120054FRA](#))

SECTION 3. [512 IAC 4-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[512 IAC 4-1-3](#) Eligible choice scholarship student requirements

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-51](#)

Sec. 3. ~~(a) The department shall establish and publish the forms and procedures for an individual to apply for a choice scholarship.~~

~~(b)~~ **(a)** To become an eligible individual **choice scholarship student**, the individual **applicant** must do the following:

- (1) Satisfy all of the requirements of ~~[IC 20-51-1-4.5](#)~~ [IC 20-51-1-4.3](#).
- (2) Submit a completed application **at an eligible school** in accordance with **the this rule and any** procedures established and published by the department.

(b) For purposes of [IC 20-51-1-4.3](#)(3)(C), an eligible choice scholarship student is enrolled in a public school, including a charter school, for at least two (2) semesters immediately preceding the first semester for which the eligible choice scholarship student receives a choice scholarship if attendance at the public or charter school is established by one (1) of the following:

- (1) An attendance entry by the school in the department's data collection system for attendance (DOE-AT), real time (DOE-RT), or membership (DOE-ME) collections for both the fall and spring membership counts.**
- (2) An official transcript from the public school corporation.**

(c) For purposes of [IC 20-51-1-4.3](#)(3)(B), the categorical designation ("A" through "F" grade) for the public school the eligible choice scholarship student would otherwise be required to attend is the public school's categorical designation at the time of the application at an eligible school.

~~(c) Choice scholarships will be granted in the order of completed applications received until the limit set forth under [IC 20-51-4-2](#) is reached.~~

(d) An individual's applicant's choice scholarship application must be complete and contain all required information for an eligibility determination to be made. The department will determine an individual's applicant's eligibility based on the order in which completed choice scholarship applications are received in the department's offices.

(e) The department will determine the amount of an eligible individual's choice scholarship student's choice scholarship in accordance with [IC 20-51-4-4](#).

(f) The department will notify the ~~eligible individual~~ **applicant** and the applicable eligible school of the following:

- (1) the ~~student~~ **applicant** is eligible and the amount of the eligible individual's **choice scholarship student's** choice scholarship; or
- (2) the ~~student~~ **applicant** is ineligible and the reason for ineligibility.

(g) A choice scholarship is valid for the school year for which it is awarded. Continued eligibility will be based on continued compliance with subsection (b): **(a)**.

(Department of Education; [512 IAC 4-1-3](#); filed Jun 25, 2012, 2:00 p.m.: [20120725-IR-512120054FRA](#))

SECTION 4. [512 IAC 4-1-3.1](#) IS ADDED TO READ AS FOLLOWS:

[512 IAC 4-1-3.1](#) Determination of eligibility

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-51](#)

Sec. 3.1. (a) The department shall establish and make available all necessary forms and procedures for applying for a choice scholarship.

(b) The eligible school is responsible for determining whether an applicant meets eligibility guidelines to qualify for a choice scholarship.

(c) To be eligible for a choice scholarship, the applicant must satisfy all of the requirements of [IC 20-51-1-4.3](#).

(d) If the eligible school determines that an applicant is eligible to receive a choice scholarship, the eligible school must complete the application for the student and submit the application through the department's choice application portal for processing. The application process begins once the eligible school submits the applicant's choice scholarship application.

(e) An eligible school may not refuse to assist an applicant with making application for a choice scholarship unless the eligible school would otherwise not accept the student for enrollment for other reasons not related to the choice scholarship program.

(f) A choice scholarship application must be complete and contain all required information before an eligibility determination can be made.

(g) If an applicant for a choice scholarship is deemed eligible and the application approved, the applicant will receive notice of the approval from the eligible school via the department's application portal. The notice will also include the estimated amount of the eligible choice scholarship student's choice scholarship.

(h) If an applicant for a choice scholarship is deemed ineligible and the application denied, the applicant will receive notice of the denial from the eligible school via the department's application portal. The notice will include:

- (1) the reason for the determination of ineligibility; and**
- (2) the process by which the applicant may appeal the determination of ineligibility if the denial occurs.**

(i) The eligible school shall print and immediately provide to the parent or guardian of the applicant a copy of the choice scholarship application and all correspondence received from the department's application portal.

(j) Nothing in this section will prevent an applicant from reapplying for a choice scholarship at any eligible school so long as the application is submitted within the application window established by the department.

(k) The eligible school shall keep and maintain a copy of any correspondence from the department in the eligible choice scholarship student's school record in accordance with section 8 of this rule.

(l) A choice scholarship is valid for the school year for which it is awarded.

(m) A choice scholarship is valid for only the school at which the eligible choice scholarship student made application and is nontransferrable.

(Department of Education; [512 IAC 4-1-3.1](#))

SECTION 5. [512 IAC 4-1-3.2](#) IS ADDED TO READ AS FOLLOWS:

[512 IAC 4-1-3.2](#) Eligible school tuition and fees

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-33-5-9](#); [IC 20-51](#)

Sec. 3.2. (a) It is the intent of this rule that an eligible choice scholarship student be charged the same tuition and fees, and receive the same discounts and reductions of tuition, as a similarly situated noneligible choice scholarship student attending the same eligible school.

(b) An eligible school must have an established tuition and fees policy in place at the time the school makes application to the department to become an eligible school.

(c) Tuition and fees may only include the costs a student would otherwise be obligated to pay to the eligible school absent a choice scholarship award.

(d) An eligible school may not charge eligible choice scholarship students tuition and fees that are in amounts that differ from what the eligible school charges similarly situated noneligible choice scholarship students.

(e) Eligible schools must first apply all tuition and fee discounts and the eligible school's financial aid, including any need-based financial aid, that the eligible choice scholarship student, or a similarly situated noneligible choice scholarship student, would have otherwise received absent a choice scholarship before determining the amount of tuition for purposes of the choice application.

(f) An eligible school may not include the costs of special education or related services in the tuition and fees amount entered on a choice scholarship application.

(g) Eligible schools that include textbook fees in the tuition and fees amount entered on their choice scholarship applications may not file a claim for textbook reimbursement under [IC 20-33-5-9](#) for eligible choice scholarship students.

(h) Eligible schools must proportionally reduce the tuition and fee amount entered on a choice scholarship student's application for an eligible choice scholarship student who is dual enrolled at a public school and at an eligible school.

(Department of Education; [512 IAC 4-1-3.2](#))

SECTION 6. [512 IAC 4-1-3.3](#) IS ADDED TO READ AS FOLLOWS:

[512 IAC 4-1-3.3](#) Determination of scholarship amount

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-51](#)

Sec. 3.3. (a) The department will initially determine an estimated amount of an eligible choice scholarship student's choice scholarship and will provide notice of the amount in the manner described in section 3.1 of this rule.

(b) The amount determined initially by the department will only be an estimate based on the information provided to the department at the time of application.

(c) After the close of the application window and the receipt of all data necessary to determine the eligible choice scholarship student's choice scholarship individual award by the department, the department will determine a final amount of an eligible choice scholarship student's choice scholarship in accordance with [IC 20-51-4-4](#) and provide notice of the same through the department's application portal.

(d) The choice scholarship amount for an eligible choice scholarship student may be adjusted proportionally if the final award differs from the estimated award amount.

(Department of Education; [512 IAC 4-1-3.3](#))

SECTION 7. [512 IAC 4-1-4](#) IS AMENDED TO READ AS FOLLOWS:

[512 IAC 4-1-4](#) Scholarship distributions

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-51-1](#); [IC 20-51-4-1](#)

Sec. 4. (a) The department will distribute the choice scholarship funds in **no less than** two (2) distributions each fiscal year.

(b) Prior to distribution of the choice scholarship, **the parent or guardian of the eligible individual** ~~(or the parent of the eligible individual)~~ **choice scholarship student** and the eligible school providing educational services to the eligible individual **choice scholarship student** must endorse the distribution on the department's form and in accordance with the process established by the department.

(Department of Education; [512 IAC 4-1-4](#); filed Jun 25, 2012, 2:00 p.m.: [20120725-IR-512120054FRA](#))

SECTION 8. [512 IAC 4-1-5](#) IS AMENDED TO READ AS FOLLOWS:

[512 IAC 4-1-5](#) Prorated scholarships

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-51-1](#); [IC 20-51-4-1](#)

Sec. 5. (a) ~~An eligible school shall notify the department, in accordance with the department's notification procedures, of an eligible individual's withdrawal or expulsion from the eligible school not later than five (5) business days after the withdrawal or expulsion.~~

(a) If information provided to the department on an application for a choice scholarship is inaccurate, incorrect, or false, the department may:

- (1) determine the student not eligible and rescind the award;
- (2) modify the award based on corrected information; or
- (3) require the eligible school to refund to the department a portion of the choice scholarship amount after notice and an opportunity for the school to respond.

(b) If an eligible choice scholarship student withdraws or is expelled from the eligible school, the eligible school shall report the student as exited on the enrollment and mobility report no later than five (5) school days after the withdrawal or expulsion.

(c) If an eligible choice scholarship student is removed from the eligible school for more than twenty (20) consecutive educational days during the school year for medical or other reasons and is not receiving educational services from the eligible school, the eligible school shall report the student as exited on the enrollment and mobility report on the twenty-first day of removal or within five (5) school days of receiving notice that the student will not return.

(d) Eligible schools must report enrollment and mobility exit dates for all students within five (5) business days of the last day of school.

~~(b)~~ (e) If an eligible individual choice scholarship student is withdrawn or expelled from the eligible school, the amount of the choice scholarship will be reduced and prorated based on the period of time the eligible individual choice scholarship student was enrolled in the eligible school.

~~(e)~~ (f) If an eligible individual choice scholarship student is withdrawn or expelled after the choice scholarship distribution is made, the eligible school may be required to refund to the department a portion of the choice scholarship amount.

~~(d)~~ (g) The department shall notify the eligible school of any amount to be remitted to the department as the result of **any of the following:**

(1) Withdrawal. or

(2) Expulsion.

(3) The department's determination that an individual is no longer eligible for a choice scholarship pursuant to subsection (a)(1).

(4) The department's modification of an award amount due to a finding under subsection (a)(2).

(h) If the eligible school disagrees with the department's determination of the amount to be remitted, the eligible school may request a review of the determination in accordance with established procedures.

~~(e)~~ (i) A choice scholarship is not transferrable to another school during the school year.

(j) Once an eligible choice scholarship student withdraws or is expelled from an eligible school or is determined to be ineligible under subsection (a)(1), that individual forfeits the remainder of the individual's choice scholarship award for the duration of the school year regardless if the individual reenrolls at the eligible school or another eligible school.

(k) An individual who is no longer eligible under this section may reapply for a choice scholarship in a subsequent school year.

(Department of Education; [512 IAC 4-1-5](#); filed Jun 25, 2012, 2:00 p.m.: [20120725-IR-512120054FRA](#))

SECTION 9. [512 IAC 4-1-6](#) IS ADDED TO READ AS FOLLOWS:

[512 IAC 4-1-6](#) Consequences for eligible schools in lowest performance categories

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-31-8-3](#); [IC 20-32-5](#); [IC 20-51-4-9](#)

Sec. 6. (a) If an eligible school is placed in either of the lowest two (2) categories or designations under [IC 20-31-8-3](#) for two (2) consecutive years, the department shall suspend choice scholarship payments for one (1) year for new eligible choice scholarship students who would otherwise use a choice scholarship to attend the school.

(b) If an eligible school is placed in either of the lowest two (2) categories or designations under [IC 20-31-8-3](#) for three (3) consecutive years, the department shall suspend choice scholarship payments for

new eligible choice scholarship students who would otherwise use a choice scholarship to attend the school until the school is placed in the middle or higher category or designation for two (2) consecutive years.

(c) If an eligible school is placed in the lowest category or designation under [IC 20-31-8-3](#) for three (3) consecutive years, the department shall suspend choice scholarship payments for new eligible choice scholarship students who would otherwise use a choice scholarship to attend the school until the school is placed in the middle or higher category or designation for three (3) consecutive years.

(d) The suspension of any school described in subsection (a), (b), or (c) shall begin at the end of the school year in which the notice was issued by the department.

(e) An eligible choice scholarship student who:

(1) is enrolled at a school described in subsection (a), (b), or (c) on the date the department issues notice of the suspension;

(2) continues to be eligible during the year of suspension; and

(3) makes application;

may continue to receive a choice scholarship at the school described in subsection (a), (b), (c), or (d) during the suspension period.

(f) This section may not be construed to prevent an eligible choice scholarship student enrolled in a school described in subsection (a), (b), or (c) from applying for a choice scholarship at a different eligible school.

(Department of Education; [512 IAC 4-1-6](#))

SECTION 10. [512 IAC 4-1-7](#) IS ADDED TO READ AS FOLLOWS:

[512 IAC 4-1-7](#) Review of department's imposition of consequences, determination of ineligibility, or termination

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-31-8-3](#); [IC 20-32-5](#); [IC 20-51-4-9](#)

Sec. 7. (a) Prior to suspending or terminating a school's eligibility, the department shall provide written notice to the eligible school. The written notice shall include the following:

(1) The nature of the noncompliance or reason for suspending or terminating eligibility.

(2) The corrective action the school must take in order to maintain eligibility.

(3) The deadline for the corrective action to be implemented.

(4) The consequences for failing to take the corrective action by the established deadline.

(b) If the eligible school fails to remedy the noncompliance within the timeline provided by the department, the department shall notify the eligible school in writing of the:

(1) suspension or termination of the school's eligibility; and

(2) process for appealing the decision.

(c) The school may appeal the department's action under subsection (b) in accordance with procedures established and published by the department.

(d) The department shall establish and publish the procedures for appealing a suspension or termination pursuant to this section.

(Department of Education; [512 IAC 4-1-7](#))

SECTION 11. [512 IAC 4-1-8](#) IS ADDED TO READ AS FOLLOWS:

[512 IAC 4-1-8](#) Correspondence, record keeping, and document retention

Authority: [IC 20-51-4-7](#)

Affected: [IC 6-3.1-30.5](#); [IC 20-18-2-13](#); [IC 20-18-2-16](#); [IC 20-19-2-2](#); [IC 20-19-3-1](#); [IC 20-31-8-3](#); [IC 20-32-5](#); [IC 20-51-4-9](#)

Sec. 8. (a) An eligible school is required to keep and maintain the application and copies of all supporting documentation for every eligible choice scholarship student who receives a choice scholarship and who is enrolled at the eligible school during the school year.

(b) The application and supporting documentation shall be kept in the eligible choice scholarship student's record at the eligible school and are subject to review by the department.

(c) All applications and supporting documentation must be retained by the eligible school and maintained in the eligible choice scholarship student's record for a period of three (3) school years.

(d) An eligible school is not required to retain the application or supporting documentation for an applicant who is determined not to be eligible for a choice scholarship or who does not enroll at the eligible school.

(e) Only choice scholarship applications completed at an eligible school where the eligible choice scholarship student intends to enroll will be accepted by the department.

(Department of Education; [512 IAC 4-1-8](#))

[Notice of Public Hearing](#)

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